

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

IBLA 95-280

Decided November 4, 1997

Appeal from a decision of the Chief, Lands Section, California State Office, Bureau of Land Management, rejecting an application, without prejudice, for a grant of land pursuant to the Act of June 18, 1932. CACA 34687.

Affirmed.

1. Land Entry: Application: Lands Necessary to Protect Existing Facilities

An application for a grant of land contiguous to applicant's aqueduct is properly rejected where the application states the applicant requires additional land to maintain existing facilities, without explaining the reason for the requirement, other than stating that the requirement arises from the expected approval of the proposed California Desert Wilderness Bill.

2. Land Entry: Application: Denial Due to Status Conflict

An application for a grant of Federal land is properly rejected where a substantial portion of the land applied for is either state-owned or appropriated for other uses.

APPEARANCES: N. Gregory Taylor, Esq., and Joseph Vanderhorst, Esq., Office of General Counsel, Metropolitan Water District of Southern California, Los Angeles, California, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Metropolitan Water District of Southern California (MWD or Appellant) has appealed from a January 20, 1995, Decision of the California State Office, Bureau of Land Management (BLM), rejecting without prejudice Appellant's application for lands claimed to be necessary "to protect and maintain its existing facilities." Appellant seeks to have the rejection of its application reversed and that it be permitted to submit a corrected application.

On December 10, 1993, Appellant filed an application with BLM for a grant of public land pursuant to provisions in the Act of June 18, 1932 (Act), 47 Stat. 324 (1932). The Act authorizes grants of land to the MWD for rights-of-way and other land uses upon approval of the map by the Secretary of the Interior. A grant is a limited fee subject to reversion.

Grants are also made subject to prior existing rights. In its application, MWD identified certain legal subdivisions of public domain land in secs. 14, 15, 16, 20, 21, 22, 23, 25, 26, 29, 30, and 31 of T. 3 S., R. 15 E., San Bernadino Meridian, Riverside County, California, in support of obtaining a grant of land. In submitting its application, MWD submitted Standard Form 299. The purpose or established need for the additional land was described by the Appellant in item 15 of Form 299 as follows: "Because of the proposed California Desert Wilderness Bill, MWD requires additional land to maintain its existing facilities."

The BLM rejected the application in its Decision dated January 20, 1995. The Decision holds that the above statement as justification "is inadequate and the application is hereby rejected without prejudice." The Decision also explains that the application was rejected for status conflicts involving the land. The Decision states:

A comparison of the District's map against the Federal land status/title records of this office reveals that lands in sections 14, 15, 16, 20, 22, 23, 25, 26, and 31 are either State-owned or appropriated for other uses. A color-coded BLM status/title plat attached hereto and made a part hereof identifies specific purposes for which the sections of land are dedicated:

<u>Purpose</u>	<u>Color Code</u>
Joshua Tree National Park	green
State-owned	pink
Land Exchange	Blue
Unsurveyed	Red

(Decision at 2.)

The Decision then summarizes the purposes for which the requested lands are already dedicated and the reasons they are unavailable to Appellant's use. The Decision states, in pertinent part:

Section 402 of the California Desert Protection Act of October 31, 1994, Pub. L. 103-433, established the new Joshua Tree National Park which boundary encompasses part or all of lands applied for in sections 14, 15, 22, 23, 25, and 26 (color code green). As of date of enactment[,] administrative jurisdiction over the portions of public domain lands formerly under administrative jurisdiction of the Bureau of Land Management was transferred to the National Park Service for administration as part of the National Park System. The lands are depicted on

the enclosed blue line map entitled "Joshua Tree National Park Boundary--Proposed, dated May 1991". The copy is identical to the map referred to in Sections 402 and 404 of the public law.

Lands in sec. 16 (color code pink) passed to the State of California on April 10, 1963, date of the approved survey, pursuant to the State School Grant Act of March 3, 1853, as amended. School Grant lands are administered by the State Lands Commission.

Lots 5, 10, 11, and 12 sec. 31 (color code blue) are under a land exchange agreement. A notice of realty action (NORA) published in the Federal Register on August 13, 1992 (57 FR 36406) notified interested parties of the pending land exchange (Serial No. CACA 30070) which will be completed in the near future and which segregated the lands from the public land laws and the mining laws.

The application is hereby rejected as to all the above listed lands.

(Decision at 2.)

The Decision further advised Appellant that adequate justification is needed for the available land in secs. 15, 20, 21, 25, 26, 29, 30, and 31 (color code yellow). (Decision at 3.) The Decision advises MWD that it must develop the justification for the proposed grant by fully describing the proposed project use of the lands, including a statement of need for the project, the practicality and feasibility of the site meeting that need, the physical suitability of the site for the proposed use, and the amount of acreage needed for the project. Id. The BLM explained in the Decision that the language in items 7(a) through 7(h) and 15(a) through 15(c) of Standard Form 299 should be used as a guide concerning the information required to develop this justification. Id.

The BLM advised Appellant in the Decision that the unsurveyed land in protracted NE $\frac{1}{4}$ sec. 20 (color code red) cannot be considered for a fee grant, as fee grants, even limited fee as this one is, must describe the lands in accordance with the latest plat of survey so the United States knows the boundaries of its holdings. (Decision at 3.)

The Appellant was also advised that its response to item 19 on Standard Form 299 does not clearly indicate whether hazardous substances will be used in the MWD's operations on the land. The Decision explained that the prospect of the United States acquiring hazardous material and environmental liability for MWD grant lands provides "another reason why additional information on specific plans for the area must be provided in the justification." Id.

Other areas of noncompliance with the filing requirements related to Standard Form 299 cited by BLM include the fact that item 5 should have reflected that this was a "new authorization" rather than an application to "amend existing authorization 0118170." (Decision at 3.) In addition, BLM notes that item 7 of Standard Form 299 contains conflicting and insufficient information regarding the use of the land. Item 7 of Standard Form 299 submitted by MWD states: "This is a request for right-of-way adjacent to diagonal drains in T. 3 South, Range 15 East, San Bernadino Base and Meridian, as shown on Exhibit 'A'." Since right-of-way applications under the Act may only be for a width not to exceed 250 feet, and since the application involves a request for land of greater width, the BLM states that Appellant must "indicate which lands would be used for rights-of-way purposes and which for other than rights of way * * *." Id.

Appellant's Statement of Reasons (SOR) for appeal claims the application was improperly denied. The MWD argues that the Decision reviews only item 15 from the Standard Form 299 for the justification of need for the land. It claims that this narrow view ignores the fact that item 13 identifies the facilities requiring maintenance as the Colorado River Aqueduct (Aqueduct) and the diagonal drains. (SOR at 2.) The MWD further explains that MWD's authority to acquire land under the Act clearly includes lands for the protection of the Aqueduct. Id. Appellant urges that the regulations governing rights-of-way should be applied here. Those regulations provide: "Where the authorized officer determines that the information supplied by the applicant is incomplete or does not conform to the act or these regulations, the authorized officer shall notify the applicant of these deficiencies and afford the applicant an opportunity to file a correction." 43 C.F.R. § 2802.4(c). Moreover, MWD contends, it was never notified that the justification set forth in its application was deemed deficient nor offered an opportunity to file a corrected or supplemental application. (SOR at 2.)

Appellant further contends that its application should not have been denied because certain of the requested land was either unsurveyed or within the Joshua Tree National Park boundary. The MWD claims that it should have been permitted to survey the unsurveyed land to satisfy that requirement and that the application for lands in the area of the park should not have been denied since final maps and descriptions of the Park's boundaries had not been filed at the time of its application. (SOR at 2.)

Appellant contends that the remaining deficiencies discussed by BLM in its Decision to deny its application for land "do not justify the denial." (SOR at 2-3.) With respect to item 19, regarding the use of hazardous substances on the requested land, Appellant claims it met the requirement of the inquiry when it stated "none." (SOR at 2.) With regard to the statement in the Decision that Appellant should have stated that it was seeking a "new authorization" instead of seeking to "amend existing authorization 0118170," Appellant claims that this request for land was clearly contemplated within 43 C.F.R. § 2803.6-1, because it "provides information

regarding Metropolitan's existing lands contiguous to the lands applied for." (SOR at 2.) Appellant contends this response could easily be corrected without rejecting the application. (SOR at 3.) Finally, with respect to the inaccurate use of the term "right of way" in item 7, Appellant argues that this should not form the basis for rejecting the application because the "purposes expressed in the application clearly identify that the lands are necessary for protection of the Aqueduct." (SOR at 3.) For all these reasons, Appellant urges that this Board reverse the Decision rejecting its application, and that it be allowed to submit a corrected application.

[1, 2] In the present case, BLM has rejected the application for the reasons stated, without prejudice, thus allowing Appellant the opportunity to correct the deficiencies and refile its application. Appellant contends it should be allowed to simply correct the deficiencies in the existing application, with no requirement of refiling. We disagree. The deficiencies in this application are significant, and go to the heart of the requirements stated for a proper application for land under the Act, 47 Stat. 324. As noted in the contested Decision, much of the land for which an application has been filed cannot be considered for a grant because it is unavailable. For example, four different categories of unavailable land were included in the application and addressed in the Decision: National Park land, state-owned land, land involved in a BLM land exchange, and unsurveyed land. (Decision at 2.) In light thereof, the applicant would likely have to determine what, and how much, additional public land situated elsewhere it might have to request. Because its purpose statement in the present application is so nebulous and unspecific, claiming only that the land is needed "to maintain existing facilities," it would be nearly impossible for BLM to determine why the MWD requires additional land, whether the remaining requested land in the current application that is available might satisfy this purpose, and if not, what other land grant might be justified.

Second, the Act requires in section 1 that the applicant describe "the boundaries, locations, and extent of said lands and of said rights of way for the purposes hereinabove set forth." 47 Stat. 324, 325. Section 1 also requires that rights-of-way are to be identified and are to be no more than 250 feet in width. The rights-of-way in this application exceed that maximum and must be redrawn. In addition, other requested land is not properly differentiated from the rights-of-way as required in section 1 of the Act. *Id.* Because the unsurveyed and other unavailable land identified in the Decision cannot be considered for a grant, the actual requirements of Appellant with respect to lands contiguous to the Aqueduct become a critical element in this analysis. The Appellant has offered no such explanation on which a rational review of its requirements can be undertaken.

The failure of the Appellant to address the hazardous substance issue is also troublesome. Appellant suggests in its SOR that the word "None," physically located in item 20, should be understood to reflect its response

to item 19, addressing hazardous substances. While this may be, the BLM was properly cautious in not making this assumption.

In its Decision, BLM has laid out with specificity, at pages 3-4, how Appellant can correct its application and refile that application. In light of the significant discrepancies, we find no indication Appellant would be harmed in refiling a proper application.

On the record before us, there is no basis upon which to afford MWD the requested relief. Section 1 of the Act provides authority for the Secretary, in his discretion, to authorize grants of land upon the proper filing of a map or maps showing the "boundaries, locations and extent" of such lands and rights-of-way, together with the purpose for which the land is required. Thus, the Secretary or his duly authorized representative may reject an application without abusing his or her discretion where the requested grant has not been, or cannot be, determined to be necessary from the existing information, and where he or she determines that the public interest is best served by such rejection. See Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182, 189 (1975). Our review of the record finds that BLM had a rational basis for rejection of the application, without prejudice to MWD, as opposed to affording MWD an opportunity to merely correct the existing application. A reasoned and detailed explanation is contained in the record to support rejection, and a careful and concise roadmap is provided to Appellant in the Decision to correct the deficiencies in the application that can be resubmitted. Id.; cf., City of Chico, 119 IBLA 136, 138-39 (1991).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge